

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

JONATHAN DEAN DAVIS

v.

DIRECTOR, TDCJ-CID

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§

CIVIL ACTION NO. 5:21-CV-00154-RWS

**ORDER**

Before the Court is the Report and Recommendation of the United States Magistrate Judge (Docket No. 6), which contains her findings, conclusions and recommendations for the disposition of this matter. The Court hereby adopts the Report and Recommendation of the Magistrate Judge as the findings and conclusions of this Court.

Petitioner Johnathan D. Davis, an inmate confined at the Telford Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed the above-captioned civil action to petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Docket No. 1. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636 and the applicable orders of this Court. After review of the petition and evidence, the Magistrate Judge issued a Report recommending the petition (Docket No. 1) be denied and the lawsuit dismissed without prejudice. Docket No. 6. The Report and Recommendation was mailed to the Petitioner. The Petitioner acknowledged receipt of the Report and Recommendation, but he filed no objections in response.

Petitioner is, therefore, barred from *de novo* review by the District Court of the Magistrate Judge's findings, conclusions and recommendations; and, except upon grounds of plain error, Petitioner is barred from appellate review of the unobjected-to factual findings and legal

conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017).

The Court has reviewed the pleadings in this cause of action and the Report of the Magistrate Judge. Upon such review, the Court concludes that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a Magistrate Judge's report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"), *cert. denied*, 492 U.S. 918 (1989). There being no grounds of plain error or manifest injustice, the Court hereby adopts the Report and Recommendation of the United States Magistrate Judge as the findings and conclusions of this Court.

Additionally, the Petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004).

To make a substantial showing, the petitioner need not demonstrate he would prevail on the merits. Rather, he must demonstrate (1) that the issues are subject to debate among jurists of reason, (2) that a court could resolve the issues in a different manner or (3) that the questions raised are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483–84; *see also Avila v. Quarterman*, 560 F.3d 299, 304 (5th Cir. 2009). Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280–81 (5th Cir. 2000).

Here, Petitioner has not shown that any of the issues raised by his petition are subject to debate among jurist of reasons. The factual and legal questions advanced by Petitioner are not novel and have been consistently resolved adversely to his position. In addition, the questions presented are not worthy of encouragement to proceed further. Petitioner has, therefore, failed to make a sufficient showing to merit the issuance of a certificate of appealability. Thus, a certificate of appealability will not be issued. Accordingly, it is

**ORDERED** that the Report of the Magistrate Judge (Docket No. 6) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that Petitioner's Petition for Writ of Habeas Corpus (Docket No. 1) is **DENIED**. It is further

**ORDERED** that Petitioner's above-titled cause is **DISMISSED WITHOUT PREJUDICE**. It is further

**ORDERED** that any and all motions currently pending in this civil action are hereby **DENIED-AS-MOOT**.

**So ORDERED and SIGNED this 23rd day of May, 2022.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE